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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,090	11/06/2006	Joachim Lohr	L7725.06112	1252
52989	7590	02/20/2008	EXAMINER	
STEVENS, DAVIS, MILLER & MOSHER, LLP			TORRES, JOSEPH D	
1615 L. STREET N.W.				
SUITE 850			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			2112	
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			02/20/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/583,090	LOHR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph D. Torres	2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 February 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 28-37 and 40-53 is/are pending in the application.
  - 4a) Of the above claim(s) 51-53 is/are withdrawn from consideration.
- 5) Claim(s) 28-37 and 40 is/are allowed.
- 6) Claim(s) 41-50 is/are rejected.
- 7) Claim(s) 41-50 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 June 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/16/2007</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 51-53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/25/2007.

**This application contains claims 51-53 drawn to an invention nonelected with traverse in the reply filed on 10/25/2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.**

### ***Drawings***

The drawings were received on 06/15/2006. These drawings are accepted.

### ***Specification***

The abstract was received on 06/15/2006. The abstract is accepted.

### ***New Claim Objections***

Claim 43 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

dependent form, or rewrite the claim(s) in independent form. Claim 43 has been amended removing all structural matter “an adapter” that would further limit the mobile station for transmitting data packets of claim 41. Claim 43 now recite only functional matter without reciting any structural elements that can be regarded as structural components for carrying out the functions in claim 43 that further limit the mobile station for transmitting data packets in claim 41.

***New Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. Claim 41 recites A mobile station for transmitting data packets comprising: a transmitter and a receiver. Nowhere does the Applicant recite any structural element that can be regarded as structural components of a mobile station for transmitting data packets for carrying out the functions of the newly added claim language in claim 41:

“wherein the mobile station is operable to determine whether the transmission power required for synchronously transmitting the retransmission data packet for the unsuccessfully decoded data packet at the predetermined point in time after having received the feedback message and for transmitting other uplink data within the same transmission time interval is lower than a maximum allowed transmission power that

the mobile station is allowed to utilize for transmitting uplink data, wherein the other uplink data is prioritized over the retransmission data packet, and wherein the transmitter is operable to synchronously transmit the retransmission data packet at the predetermined point in time after having received the feedback message and to transmit the other uplink data to the base station using the maximum allowed transmission power, if the required transmission power is larger than the maximum allowed transmission power”.

Claim 43 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connections to a structural element further limiting claim 41 and the cooperative relationship between such a structural element and the structural elements in claim 41.

Claims 41-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Claim 41 recites A mobile station for transmitting data packets comprising: a transmitter and a receiver. Nowhere does the Applicant recite any structural connection of any components of a mobile station for transmitting data packets for carrying out the functions of the newly added claim language in claim 41: “wherein the mobile station is operable to determine whether the transmission power required for synchronously transmitting the retransmission data packet for the

unsuccessfully decoded data packet at the predetermined point in time after having received the feedback message and for transmitting other uplink data within the same transmission time interval is lower than a maximum allowed transmission power that the mobile station is allowed to utilize for transmitting uplink data, wherein the other uplink data is prioritized over the retransmission data packet, and wherein the transmitter is operable to synchronously transmit the retransmission data packet at the predetermined point in time after having received the feedback message and to transmit the other uplink data to the base station using the maximum allowed transmission power, if the required transmission power is larger than the maximum allowed transmission power”.

Claim 43 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connections to a structural element further limiting claim 41 and the cooperative relationship between such a structural element and the structural elements in claim 41.

Claims 41-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. Claim 41 recites, “A mobile station for transmitting uplink data packets via an uplink data channel to a base station in a mobile wireless communication system comprising the mobile station and the base station

using a hybrid automatic repeat request (HARQ) retransmission protocol applying soft combining of data packets and applying synchronous retransmissions", in the preamble.

The limitations in the body of claims 41 fail to recite any structural elements of a mobile station for transmitting uplink data packets relating the limitations in the body of claim 41 to " a hybrid automatic repeat request (HARQ) retransmission protocol applying soft combining of data packets and applying synchronous retransmissions".

### ***Response to Arguments***

Applicant's arguments filed 02/04/2008 have been fully considered but they are not persuasive.

The Applicant contends, "The claims have been amended to overcome the objections on page 4 of the office action and the 35 USC 112, second paragraph, rejections on pages 4-7 of the office action".

The Examiner disagrees and asserts that claims 42-46 and 48-50 now recite only functional matter without reciting any structural elements that can be regarded as structural components for carrying out the functions in claim 42-46 and 48-50 that further limit the mobile station for transmitting data packets in claim 41.

### ***Previous Claim Objections***

Claims 42, 44, 45, are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 42 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. Claim 44 recites no structural element further limiting the mobile station of claims 41 and 43, but instead recites a functional/step limitation for a method. Claim 45 recites no structural element further limiting the mobile station of claims 41, 43 and 44, but instead recites a functional/step limitation for a method. Claim 42 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. Claim 46 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. Claim 48 recites no structural element further limiting the mobile station of claims 41 and 47, but instead recites a functional/step limitation for a method. Claim 49 recites no structural element further limiting the mobile station of claims 41 and 47, but instead recites a functional/step limitation for a method. Claim 50 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method.

***Previous Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 42, 44-46 and 48-50 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements,

such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

Claim 42 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connections to a structural element further limiting claim 41 and the cooperative relationship between such a structural element and the structural elements in claim 41.

Claim 44 recites no structural element further limiting the mobile station of claims 41 and 43, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connection to a structural element further limiting claims 41 and 43, and the cooperative relationship between such a structural element and the structural elements in claims 41 and 43.

Claim 45 recites no structural element further limiting the mobile station of claims 41, 43 and 44, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connection to a structural element further limiting claims 41, 43 and 44, and the cooperative relationship between such a structural element and the structural elements in claims 41, 43 and 44.

Claim 46 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connections to a structural element further limiting claim 41 and the cooperative relationship between such a structural element and the structural elements in claim 41.

Claim 48 recites no structural element further limiting the mobile station of claims 41 and 47, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connection to a structural element further limiting claims 41 and 47, and the cooperative relationship between such a structural element and the structural elements in claims 41 and 47.

Claim 49 recites no structural element further limiting the mobile station of claims 41 and 47, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connection to a structural element further limiting claims 41 and 47, and the cooperative relationship between such a structural element and the structural elements in claims 41 and 47.

Claim 50 recites no structural element further limiting the mobile station of claim 41, but instead recites a functional/step limitation for a method. The omitted structural cooperative relationships are: any connections to a structural element further limiting claim 41 and the cooperative relationship between such a structural element and the structural elements in claim 41.

***Claim Rejections - 35 USC § 103***

In view of the amendment filed 02/04/2008, the Examiner withdraws all prior rejections under 35 USC § 103.

***Allowable Subject Matter***

Claims 28-37 and 40 are allowed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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